Supreme Court, U.S.
FILED
DEC 12 1985
JOSEPH F. SPANIOL, JR.
CLERK

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1985

No. 85-895

RATEPAYERS FIGHT BACK,

PETITIONER

V.

MIDDLE SOUTH ENERGY, INC.,
ARKANSAS POWER & LIGHT CO.,
ARKANSAS PUBLIC SERVICE,
COMMISSION ATTORNEY GENERAL
OF ARKANSAS,

RESPONDENTS

APPENDIX TO MEMORANDUM OF RESPONDENT
ARKANSAS PUBLIC SERVICE COMMISSION
IN RESPONSE TO PETITION FOR A
WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

Vincent Foster, Jr.
Webster L. Hubbell
Counsel of Record
ROSE LAW FIRM
A Professional Association
120 East Fourth Street
Little Rock, Arkansas 72201
(501) 375-9131

BEST AVAILABLE COPY

Walter W. Nixon, III
Special Counsel to Arkansas
Public Service Commission
Hale, Ward, Young, Green &
Morley
One Broadway River Center
628 West Broadway, Suite 300
North Little Rock, Arkansas
72114
(501) 376-4000

TABLE OF CONTENTS

APSC Exhibit A--Petition for Rehearing By Panel and Suggestion for Rehearing En Banc by the Eighth Circuit Court of Appeals, Docket Nos. 84-2356-EA, 84-2409, 84-2410, and 84-2480

APSC Exhibit B--Stipulation and Settlement Agreement in APSC Document No. 84-249-U

APSC Exhibit C--Arkansas Public Service Commission Order No. 26 in Docket No. 84-249-U

APSC EX. A

IN THE UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

NOS. 84-2356-EA, 84-249,
84-2410, AND 84-2480

MIDDLE SOUTH ENERGY, INC. and
ARKANSAS POWER AND LIGHT COMPANY,

Appellees

vs.

ARKANSAS PUBLIC SERVICE COMMISSION;
ROBERT E. JOHNSTON, COMMISSIONER;
PATRICIA S. QUALLS, COMMISSIONER;
and JAMES W. DANIEL, COMMISSIONER

and

ATTORNEY GENERAL OF ARKANSAS;
RATEPAYERS FIGHT BACK,

Appellants

Appeal From
United States District Court
For the Eastern District of Arkansas
Western Division

HONORABLE HENRY WOODS
District Judge

PETITION FOR REHEARING BY PANEL
AND SUGGESTION FOR REHEARING EN BANC

VINCENT FOSTER, JR.
CAROL S. ARNOLD
ROSE LAW FIRM
A Professional Association
120 East Fourth Street
Little Rock, Arkansas 72201
(501) 375-9131

STATEMENT OF COUNSEL

I express a belief, based on a reasoned and studied professional judgment, that the decision is contrary to the following decisions of the Supreme Court of the United States and that consideration by the full Court is necessary to secure and maintain uniformity of decisions in this Court. These Supreme Court decisions include: New England Power Co. v. New Hampshire, 455 U.S. 331 (1982); and Ark. Electric Cooperative Corp. v. Arkansas Public Service Commission, 461 U.S. 375 (1983).

I also express a belief, based on a reasoned and studied professional judgment, that this appeal involves a question of exceptional importance: Does the Commerce Clause permit the State of Arkansas to regulate the securities and

evidences of indebtedness of a public utility operating within its borders?

_____
Vincent Foster, Jr.

_____
Carol S. Arnold

Attorneys of Record
for Arkansas Public
Service Commission
and Its Commissioners

STATEMENT OF THE CASE

This appeal is from the judgment of the District Court of the Eastern District of Arkansas entered on September 14, 1984, permanently enjoining Appellant Arkansas Public Service Commission ("APSC or "the Commission") and its individual commissioners from conducting an administrative proceeding involving financing documents executed by Appellee, Arkansas Power & Light Company ("AP&L").

AP&L is a public utility operating in Arkansas and is a wholly-owned subsidiary of Middle South Utilities, Inc. ("MSU"). MSU is a holding company subject to the Public Utility Holding Company Act of 1935, 15 U.S.C. § 79 et seq. In February, 1974, MSU organized a subsidiary, Middle South Energy, Inc. ("MSE"), to facilitate the financing and

construction of a two-unit nuclear generating plant to be located in Port Gibson, Mississippi (hereafter "the Grand Gulf project"). The sole asset of MSE, a wholly-owned subsidiary of MSU, is a 90% undivided interest in the Grand Gulf Project. The capacity of Grand Gulf has been allocated among AP&L and MSU's affiliate operating companies in Louisiana and Mississippi by an order of the Federal Energy Regulatory Commission ("FERC").

The financing of the Grand Gulf Project was accomplished through a series of agreements involving MSU, MSE, AP&L, MSU's other affiliated operating companies, and third party lenders. These agreements were filed with the Securities and Exchange Commission ("SEC") as required by the Holding Company Act. Although AP&L executed a

number of these agreements, AP&L failed to seek approval of any of these agreements with the APSC required by Arkansas law. Ark. Stat. Ann. § 73-255.

On August 1, 1984, the APSC initiated a proceeding directing AP&L to appear and show cause why the agreements obligating AP&L in connection with the Grand Gulf project should not be held void on the grounds that AP&L failed to seek prior approval of these agreements from the Commission.

A hearing was set in the show-cause proceeding, and AP&L submitted the requested documents and written testimony to the APSC. Before the hearing took place, MSE filed suit in District Court to enjoin the Commission from proceeding. The District Court entered judgment enjoining the Arkansas Commission from proceeding, and this

appeal followed.

After reviewing the briefs of the parties and hearing oral arguments, the panel[1] entered its opinion and judgment on August 23, 1985. The Court of Appeals affirmed the District Court's judgment, holding that the Arkansas Commission's action constituted a direct and substantial burden on interstate commerce. Middle South Energy Inc. v. Arkansas Public Service Commission, et al., Slip Op. No. 82-2409, 84-2410, 84-2480 (8th Circuit, August 23, 1985). Because the Arkansas Commission holds the good faith belief that the Court's decision conflicts with Supreme Court cases interpreting the Commerce Clause, Appellants now petition for rehearing of

---

[1]The panel consisted of Circuit Judges Gibson and Ross and Senior District Judge Meredith.

the case and request a rehearing en banc pursuant to Rules 40 and 35(b) of the Federal Rules of Appellate Procedure and Rules 15 and 16 of the 8th Circuit Rules of Appellate Procedure.

ARGUMENT

THE COMMERCE CLAUSE PERMITS THE STATE OF ARKANSAS TO REGULATE THE SECURITIES AND EVIDENCES OF INDEBTEDNESS OF ARKANSAS POWER & LIGHT CO.

A. The Show-Cause Proceedings are Neutral in Their Impact.

The Arkansas Commission is empowered by statute to authorize the issuance of securities and evidences of indebtedness of public utilities operating within the State, and no issuances may be made without the Commission's approval. Ark. Stat. Ann. §§ 73-254, 73-255 (1979 Repl.) The APSC shares concurrent jurisdiction over the securities of AP&L

with the SEC under the Public Utility Holding Company Act, which provides:

> Nothing in this chapter . . . shall . . . affect the jurisdiction of any other commission . . . of any state or political subdivision of any state, over any person, security or contract, insofar as such jurisdiction does not conflict with the provision of this chapter or any rule, regulation, or order thereunder. 15 U.S.C. §79u.

The Holding Company Act further prohibits the SEC from approving any acquisition of securities "unless it appears to the satisfaction of the Commission that such state laws as may apply in respect of such acquisition have been complied with." 15 U.S.C. §79j(f).

The SEC has specifically recognized the APSC's authority over AP&L's financial commitments in connection with the Grand Gulf project. Middle South Utilities, Inc., SEC Holding Company Act

Release No. 23495 (November 23, 1984). In addition, by enacting the concurrent jurisdiction terms of the Holding Company Act, "Congress recognized that state securites regulation would have some effect on federal regulation of interstate rates and had no intent to eliminate that effect." Indiana and Michigan Power Company v. State of Michigan, 279 N.W.2d 450 (Mich. 1979).

The issue presented to this Court was the difficult question of whether the APSC was preempted from reviewing AP&L's financing obligations by the Federal Power Act, as the District Court found, or whether the APSC and the SEC share exclusive jurisdiction over the agreements.

The Court, however, avoided resolving the preemption question and instead applied a Commerce Clause analysis,

finding that the Arkansas Commission had a discriminatory purpose. "Arkansas . . . seeks to close its borders to high-cost electricity," the Court concluded, and this creates "a preference for citizens in the regulatory jurisdiction gained at the expense of out-of-state customers." Opinion, at 23.

The District Court below never made any such finding as to the intent or purpose of the APSC. The APSC, represented at trial by its staff attorneys, was not on notice that it should present evidence on this issue or that it might later be charged by an appellate court with discriminatory intent. Only one witness was presented to the District Court, he being an economic witness offered by MSE. There was not one word of testimony by this witness or anyone else on the intent of

the APSC. The judge asked no questions about the APSC's purposes. No questions were asked about intent on cross-examination. The entire hearing took less than an afternoon and the transcript is only 73 pages long. The Court can scan the transcript and find not a word regarding the APSC's purpose.

MSE's Complaint filed in the District Court is also silent on the issue. While the jurisdictional paragraph gives a passing nod to the commerce clause, the Complaint never alleges that the APSC proceeding was motivated by discriminatory intent or purpose.

This Court apparently made its novel finding as to the APSC's purposes by referring to the massive exhibits which AP&L and MSE placed into evidence at trial. These consist of the financing documents themselves, but also include

public filings, pleadings, newspaper articles, and the like. With the benefit of hindsight, the APSC's trial attorneys would in all likelihood challenge this attempt to load up the record since the District Court hearing was clearly directed at the preemption issue alone.

This Court's finding of discriminatory intent is the starting point of its entire Commerce Clause analysis. Since this issue is critical, a constitutional interpretation of this magnitude should be based on a fully developed record. The APSC should have the opportunity to rebut any allegation of discriminatory intent and address the issue fully. By leaping to the conclusion it reached, this Court not only second guessed the district court judge and misunderstood certain evidence, but its opinion distorts the well

established construction of the Commerce Clause.

The Court's misinterpretation begins with its erroneous assumption that the financing agreements which AP&L signed govern the transmission of Grand Gulf power into Louisiana, Mississippi, and Arkansas.

A look at the documents in the record will show that they do not control the allocation or transmission of Grand Gulf electricity. In fact, none of the documents were ever filed with the FERC, the federal agency responsible for the regulation of the wholesale sale and transmission of power in interstate commerce. 16 U.S.C. § 824(a). The documents which the APSC sought to review included (1) the Availability Agreement of June 21, 1984, wherein AP&L and the other operating companies in effect

agreed to reimburse MSE for the cost of construction of the Grand Gulf Project to provide collateral for the financing of Grand Gulf; (2) the Second Amendment to Availability Agreement, wherein AP&L assumed the obligation to pay for a 17.1% share of Grand Gulf costs whether or not the project ever generated or sold any electricity; and (3) a series of assignments of the Availability Agreement whereby AP&L and the other operating companies consented to make payments in the form of unsecured "advances" to MSE or to pay funds directly to the lenders in the event MSE defaulted in its payments and the FERC or another regulatory authority prohibited the operating companies from making payments under the Availability

Agreement.[2]

It is not these complex financing agreements, but rather the Unit Power Sales Agreement ('UPSA) and the System Agreement, both of which were submitted for approval to the FERC, which control the sale and transmission of Grand Gulf power. The Arkansas Commission did not purport to review either the UPSA or the Systems Agreement.

The Court thus completely misreads the effect of the agreements which the APSC sought to review. Even if the APSC had found that the financing documents should have been declared void, AP&L's obligation under the UPSA (as amended by the FERC) to purchase 36% of MSE's share

---

[2]The Court incorrectly states that the lenders agreed to make unsecured advances to MSE in the event a regulatory agency prohibited the operating companies from making payments. Opinion, at 4, fn. 7.

of the capacity of the Grand Gulf project would not have been diminished. Nothing the APSC could have done in the show-cause proceeding would interfere with the FERC-ordered allocation of power between Arkansas, Mississippi, and Louisiana.

The APSC did argue before the FERC that Arkansas did not need Grand Gulf capacity, and the APSC was concerned with the economic impact on Arkansas of Grand Gulf. AP&L also was concerned and tried to persuade the FERC to allocate all the Grand Gulf capacity to Mississippi and Louisiana because Arkansas did not need Grand Gulf, as AP&L's counsel admitted in oral argument to this Court.

The stand taken by the APSC and AP&L in the FERC proceedings, however, does not constitute discrimination against the other states, and their positions before

the FERC on allocation have nothing to do with this appeal. Significantly, no party from Mississippi or Louisiana attempted to intervene at any stage of the case. Aside from several Arkansas intervenors, the only other party involved in this appeal was a group of MSE bondholders who did not argue that the APSC discriminated against out-of-state investors or interfered with interstate commerce.

The show-cause proceeding undertaken by the APSC was directed solely at AP&L, an Arkansas utility. Regulatory agencies in Louisiana or Mississippi are entitled to regulate utilities within their jurisdiction as well. Mississippi, for example, granted the original certificates of need for the Grand Gulf project and currently has undertaken a proceeding to revoke the certificates of

Unit Two of the project.

The exercise of a state's regulatory authority over the securities of public utilities within its borders has been held not to discriminate against interstate commerce. In Baltimore Gas & Electric Co. v. Heintz, 760 F.2d 1408 (4th Cir. 1985), the Court addressed the impact of a state statute which restricted the acquisition of stocks and bonds of Maryland utilities. A Maryland utility, seventy percent of whose shares were owned by investors outside the state, proposed a share-for-share exchange of all its stock for shares in a newly formed holding company, a transaction which would be prohibited by the state statute. The Fourth Circuit Court of Appeals held inter alia that the Maryland statute was not designed to favor local commerce because it imposed

no unique burden on interstate commerce. The statute "regulates evenhandedly," and the minimal burden it imposed was outweighed "by the state's interest in protecting the consumers of the products of public utilities." 760 F.2d 1408, 1423, 1425.

Because of the Court's erroneous assumption that the APSC's proceeding interfered with the interstate transmission of power, the Court's construction of the Commerce Clause is far broader than the Supreme Court intended in New England Power Company v. New Hampshire, 455 U.S. 331 (1982). In that case, the New Hampshire commission issued an order, discriminatory on its face, which restricted the export of cheap hydroelectric power generated within the state. New England Power sued to enjoin the Commission's order. In

contrast to the case on appeal, the attorneys general from Massachusetts and Rhode Island intervened and argued that the New Hampshire order discriminated against and interfered with interstate commerce. The Supreme Court agreed and held that New Hampshire "sought to restrict the flow of privately owned and produced electricity in interstate commerce, in a manner inconsistent with the Commerce Clause." 455 U.S. 331, 344.

In reaching this conclusion, the Court relied on a series of Commerce Clause cases which struck down facially discriminatory state legislation which conferred upon state residents a preference to the state's natural resources and restricted the flow of products across state lines. The Court stated that "[T]hese cases stand for the basic principle that a 'state is without

power to prevent privately owned articles of trade from being shipped and sold in interstate commerce on the grounds that they are required to satisfy local demands or because they are needed by the people of the State.'" 455 U.S. 331, 338, quoting Philadelphia v. New Jersey, 437 U.S. 619, 627.

This Court's decision throws this line of Commerce Clause cases into confusion. The APSC show-cause proceeding did not restrict the flow of any product crossing any state line, but rather was directed at AP&L's financial commitments. No "articles of trade" being shipped or sold in interstate commerce were involved, only the financial obligations of an Arkansas utility.

The record of the APSC's show-cause proceeding does not evidence

discrimination against out-of-state products. Nothing in New England Power or established Commerce Clause analysis prohibits this lawful exercise of State authority.

B. Any Impact of the Show-Cause Proceeding on Interstate Commerce is Incidental Only.

As the Court recognized, the regulation of utilities is one of the most important functions of the police power of the states. Ark. Electric Cooperative Corp. v. Arkansas Public Service Commission, 461 U.S. 375 (1983).

Specifically, a state has a "very substantial interest in the issuance of securities under its laws by a company organized and operating" within that state. Indiana Michigan Power Co. v. State of Michigan, 275 N.W.2d 400 (1979). Arkansas thus has a legitimate

local interest in seeing that its utility regulatory laws are enforced and in protecting the financial integrity of the utilities within its borders.

This Court has recognized the states' interest in regulation of local public utilities in South Dakota Public Utilities v. F.E.R.C., 690 F.2d 674 (8th Cir. 1982). There the Wisconsin Public Service Commission denied a permit to construct a nuclear generating plant which had been permitted by an order of the Nuclear Regulatory Commission. Representatives of South Dakota and Minnesota argued that Wisconsin's actions burdened interstate commerce and cited New England Power. This Court, noting that the Wisconsin Commission's denial turned on lack of need for the nuclear plant, economic disbenefits, and superiority of alternate means of

generation, found that the "circumstances in the New England Power case to be so substantially different that it is inapplicable," and flatly rejected the Commerce Clause argument. 690 F.2d 674, 678.

Similarly, the APSC review of the financing documents in question focused on AP&L's participation in the financing of the Grand Gulf Project, a matter relevant to the utility's financial well-being. As in the case of Wisconsin's denial of a construction permit, this is a matter of local concern only.

Since the APSC had not even begun its hearings, no direct impact of the show-cause proceeding had occurred on interstate commerce or anywhere else. The impact of APSC's exercise of jurisdiction over the documents

evidencing AP&L's financing obligation would be at most incidental. Evidence at trial was that the markets were uncertain and that there was unrest among investors about MSU stock. Such incidental effects are not the type of discrimination forbidden by the Commerce Clause. Baltimore Gas & Electric Co. v. Heintz, 760 F.2d 1408 (4th Cir. 1985).

Evenhanded state regulation of a legitimate local public interest is upheld if its effects on interstate commerce are incidental, unless the burden imposed on interstate commerce is excessive in relation to the local benefits. Pike v. Bruce Church, 397 U.S. 137 (1970).

The Supreme Court recently found that a State's interest in regulating its utilities outweighed any burden on interstate commerce. In Arkansas

Electric Cooperative Corp. v. Arkansas Public Service Commission, 461 U.S. 375 (1983), the APSC asserted regulatory jurisdiction over the wholesale rates charged by the Arkansas Electric Cooperative Corporation ("AECC") to its member retail distributors located in the state. Although the AECC purchased most of its energy from power plants located within the state, its facilities were tied to an interstate grid. After finding that federal law did not preempt state regulation of power cooperatives, the Supreme Court held that regulation of AECC's wholesale rates by the State of Arkansas did not impose an impermissible burden on interstate commerce. Because state regulation was within the scope of legitimate local interests and had only an incidental effect on the price structure of the interstate grid, the

APSC's assertion of jurisdiction "offends neither the Supremacy Clause nor the Commerce Clause." 461 U.S. 375.

Similarly, Arkansas' interest in regulating the securities of a utility within its border outweighs any incidental impact on creditors in other states. If the Court's opinion is allowed to stand, utilities in Arkansas and other states as well will be invited to avoid state regulation of their securities. Any public offering by and most financial arrangements of a major utility will involve some impact outside the state because of the national markets where investors from around the country deal. This Court's Commerce Clause analysis will leave the states powerless to scrutinize or regulate any of these arrangements.

The financial stability of AP&L is

essential if the public is to be served with electric service at a just and reasonable rate. Arkansas sought to achieve this end by securing AP&L's compliance with state law governing its securities and evidences of indebteness, and the state's interest in pursuing this lawful exercise of the authority by the APSC outweighs any incidental burdens on interstate commerce that may result.

CERTIFICATE OF SERVICE

I, Carol S. Arnold, do hereby certify that I mailed a copy of the above and foregoing Petition for Rehearing and Suggestion for Rehearing En Banc to:

Mr. Michael Thompson
2000 First Commercial Building
Little Rock, Arkansas 72201

Mr. Jerry D. Jackson
1000 Savers Federal Building
Little Rock, Arkansas 72201

Mr. Steve L. Riggs
P. O. Box 551, Little Rock
Arkansas 72203

Mr. Robert Wood
Attorney General's Office
Justice Building
Little Rock, Arkansas 72201

Mr. Jay T. Youngdahl
2101 Main Street
P. O. Box 6030
Little Rock, Arkansas 72216

Mr. Louis H. Willenken
Lewis, Willenken, Reid & Priest
40 West 57th Street
New York, New York 10010

Mr. N. M. Morton, Jr.
Wright, Lindsey & Jennings
2200 Worthen Bank Building
Little Rock, Arkansas 72201

on this 5th day of September, 1985.

/s/
Carol S. Arnold

APSC EX. B

ARKANSAS PUBLIC SERVICE COMMISSION

IN THE MATTER OF THE APPLICATION OF ARKANSAS POWER & LIGHT COMPANY FOR APPROVAL OF CHANGES IN RATES APPLICABLE TO RESIDENTIAL, GENERAL SERVICE, INDUSTRIAL, AND OTHER RETAIL ELECTRIC SERVICE	)	DOCKET NO. 84-249-U
IN THE MATTER OF THE APPLICATION OF REYNOLDS METALS COMPANY FOR INTERPRETATION OF AGREEMENT FOR ELECTRIC SERVICE	)	DOCKET NO. 85-198-U

STIPULATION AND
SETTLEMENT AGREEMENT

The Arkansas Public Service Commission Staff ("Staff"), Arkansas Electric Energy Consumers ("AEEC"), Southern Cotton Ginners Association ("SCGA"), Attorney General Steve Clerk ("AG"), Reynolds Metals Company ("Reynolds") and Arkansas Power & Light

Company ("AP&L" or "the Company") (hereinafter collectively referred to as "Parties") consent and agree to the following terms in settlement of all issues pending before the Arkansas Public Service Commission ("Commission" or "APSC") in the aforementioned dockets and in the additional proceedings specified herein:

1. AP&L will be permitted to implement effective for bills rendered on and after September 9, 1985, a new Rate Schedule Rider ("Rate Schedule Rider M33" or "Rider M33"), in the form attached hereto as Exhibit 1, to recover costs associated with the Grand Gulf nuclear plant ("Grand Gulf"), a ninety percent share of which is owned by Middle South Energy, Inc. ("MSE"). Under the provisions of Rate Schedule Rider M33, all costs associated with

Grand Gulf Unit 1 incurred by AP&L will be retained, deferred or recovered by AP&L as follows:

a. Effective on September 1, 1985, AP&L will permanently retain the Arkansas retail allocation of the proportions of the costs associated with its allocated share of the power available to MSE from Grand Gulf Unit 1, as shown in Table I set forth below which proportions are stated in terms of percentages of MSE's share of Grand Gulf Unit 1 ("Retained Share"). The Arkansas retail portion of such costs associated with the Retained Share will not be recovered from AP&L's Arkansas retail customers under Rate Schedule Rider M33.

TABLE I

Year	Retained Share*
1	4.32%
2	4.77%

3	5.22%
4	5.67%
5	6.12%
6	6.57%
7	7.02%
8	7.47%
9	7.92%
10 and all succeeding years	7.92%

*Retained Share shown is expressed on a total company basis

The proportionate reductions in revenues from AP&L's Arkansas retail customers under this subparagraph will be permanent and will never be recovered from AP&L's Arkansas retail customers except as provided in paragraph 3 of this Agreement. Provided, however, should MSE subsequently execute a settlement agreement which results in a permanent reduction in the charges to AP&L from that which MSE would otherwise be entitled to collect in accordance with FERC Opinion No. 234 dated June 13, 1985, such permanent reduction will first be applied to reduce on a dollar-

for-dollar basis the Retained Share as set forth in this paragraph. In the event such permanent reduction in charges by MSE exceeds the Retained Share provided in this paragraph, the Current Recovery Share described in subparagraph (1)(c) of this Agreement will be reduced to the extent of such excess.

b. Effective on September 9, 1985, and terminating on August 31, 1995, AP&L will defer or inventory the Arkansas retail allocation of the proportions of the costs associated with its allocated share of the power available to MSE from Grand Gulf Unit 1, as shown in Table II set forth below which proportions are stated in terms of percentages of MSE's share of Grand Gulf Unit 1 ("Inventory Share"). The costs deferred and accrued in the Inventory

Share will not be recovered from AP&L's Arkansas retail customers during the aforesaid ten-year period except as provided in paragraph 2 and paragraph 3 of this Agreement.

TABLE II

Year	Inventory Share*
1	14.88%
2	14.23%
3	13.78%
4	10.53%
5	7.88%
6	6.63%
7	5.18%
8	4.72%
9	4.28%
10	4.08%

*Inventory Share shown is expressed on a total company basis

Provided, however, should MSE subsequently execute a settlement agreement containing an inventory or deferral plan which results in a reduction of the charges to AP&L from that which MSE would otherwise be

entitled to collect in accordance with FERC Opinion No. 234 dated June 13, 1985, such reduction due to an inventory or deferral plan by MSE will first be applied on a dollar-for-dollar basis to reduce the Inventory Share as set forth in this paragraph. In the event such reduction in charges to AP&L resulting from a MSE inventory or deferral plan exceeds the Inventory Share provided in this subparagraph, the Current Recovery Share will be reduced to the extent of such excess. It is further agreed that AP&L shall be permitted to recover on a current basis the incremental cost of financing the deferral of the Inventory Share shown in Table II above, as provided in the attached Rider M33. The cost of financing incurred to finance the Inventory Share and the phase-in of a portion of the Current Recovery Share

which is recovered under Rider M33 will not be utilized to calculate the Company's revenue requirements recovered through the Company's other rate schedules. Beginning in year eleven (11), the Company shall be allowed to include the balance of costs accumulated in the Inventory Share (which are accumulated during the period September 1, 1985 through August 31, 1995, and until such time as these costs are reflected in Arkansas retail rates on a current recovery basis) in its rate base for determining its Arkansas retail revenue requirements. In addition, the Company shall amortize on a level basis and recover through its retail rates such accumulated costs over the remaining depreciable life of Grand Gulf Unit 1 or such shorter period of time as the Commission may subsequently determine to be appropriate.

c. Commencing with all bills rendered on and after September 9, 1985, AP&L will be permitted to recover the Arkansas retail portion of all costs associated with the proportions of its allocated share of the power available to MSE from Grand Gulf Unit 1 on a current basis in accordance with the terms and provisions of Rider M33, as shown in Table III set forth below which proportions are stated in terms of percentages of MSE's share of Grand Gulf Unit 1 ("Current Recovery Share"):

TABLE III

Year	Current Recovery Share*
1	16.80%
2	17.00%
3	17.00%
4	19.80%
5	22.00%
6	22.80%
7	23.80%
8	23.80%
9	23.80%
10	24.00%

11 and all succeeding years	28.08%

*Current Recovery Share shown is expressed on a total company basis

A portion of Grand Gulf Unit 1 costs to be recovered from AP&L customers pursuant to this subparagraph (c) will be phased in over a ten-year period in accordance with the phase-in methodology set forth in the attached Rider M33.

d. In the event any customer of AP&L ceases to be a customer of AP&L or reduces consumption or demand before the Company has fully recovered the costs accumulated and deferred in either the Inventory Share or the phase-in plan with respect to the Current Recovery Share as described in subparagraph (c) of this paragraph 1, the parties agree that: (a) no attempt will be made to impose any charge or penalty on such customer as a result of the customer's

withdrawal from the system before completion of the recovery of such costs and (b) all deferred amounts will be recovered from all Arkansas retail customers then and thereafter receiving service on the AP&L system.

e. The parties stipulate and agree that the Arkansas retail portion of the costs associated with Grand Gulf Unit 1 will be determined using the production demand related allocation methodology approved or utilized by the Commission in establishing Arkansas retail rates. Beginning September 9, 1985, this production demand related allocation factor to be used will be 88.59 percent which is the production demand related allocation factor for interim use under this Agreement pending final order in the docket established pursuant to paragraph 6 of this

Agreement. The parties further agree that the allocation factor established in that docket may be redetermined by the Commission in any subsequent rate proceedings involving AP&L. Any such subsequent change in this allocation factor would be incorporated in the next update of costs recovered in Rider M33 as provided under the terms of Rider M33 and will be utilized prospectively. It is understood that this production demand allocation factor was derived using a cost allocation methodology which is disputed by some of the parties and the agreement by any party to the use of this factor on an interim basis shall not be deemed as acceptance of this factor or the methodology by which it was derived for other purposes.

2. The parties recognize and agree that the Company's agreement to defer

the recovery of a portion of the costs incurred for Grand Gulf Unit 1 (the Inventory Share), as provided in subparagraph 1(b) of this Agreement, or to phase in the recovery of any portion of the Current Recovery Share as provided in subparagraph (1)(c) of this Agreement (hereinafter collectively referred to as Deferred Grand Gulf costs) is contingent upon the conditions set forth in subparagraph 2(a) and 2(b) as set forth below:

a. The Company's agreement to defer or phase-in a portion of the Grand Gulf costs as provided in this Agreement is conditioned upon the Company's ability to finance such deferral on reasonable terms and the Company agrees that it will use its best efforts to secure such financing.

i) The parties agree that in the event the Company is not able to finance all or any portion of the Deferred Grand Gulf costs on reasonable terms because of (1) inadequate interest coverage ratios or other restrictions contained in the Company's mortgage or charter, (2) policies, rules or regulations of the Securities and Exchange Commission, Internal Revenue Service, or any other state or federal agency which is aplicable to the Company, (3) restrictions or requirements contained in any legislative enactments after the date of this Agreement, (4) changes in accounting standards, policies or procedures adopted by the Financial Accounting Standards Board (FASB) or the FERC, or changes in the application of existing standards, policies by the FASB or FERC, (5) other restrictions upon the

Company's ability to finance because of inadequate revenues or earnings, then in such event: (a) the Inventory Share will be reduced, after thirty (30) days notice to the Commission and the office of the Attorney General, to the extent of the Company's inability to finance the deferral of such costs on reasonable terms during the period of such inability to finance, and the percentage or amount of the costs to be recovered currently from customers (Current Recovery Share) as set forth in subparagraph (1)(c) of this Agreement will be increased to the extent necessary to recover, on a current basis, the costs which would otherwise have been allocated to the Inventory Share but for the Company's inability to finance, and (b) the proportion of the

costs in the Current Recovery Share which would be deferred under the phase-in plan as set forth in Rider M33 will be reduced to the extent of the Company's inability to finance the deferral of such costs on reasonable terms and the Company will be permitted to amend Rider M33 to recover such costs from its Arkansas retail customers on a current basis.

ii) If, during the thirty (30) day notice period set forth in paragraph 2(a)(i) above, any party shall disagree with the Company's contention that it is unable to finance all or any portion of such deferral on reasonable terms, any such party shall have the right to file a petition with the Commission seeking a determination as to whether the Company is unable to finance such deferrals on reasonable terms because of any of the

reasons set forth in subparagraph (a)(i) of this paragraph. The Company agrees that it shall have the burden of proof to establish the existence of such inability to finance in any such proceeding before the Commission. Any party to the proceeding before the Commission who is aggrieved by the Commission's order determining whether an inability to finance in any such proceeding before the Commission. Any party to the proceeding before the Commission who is aggrieved by the Commission's order determining whether an inability to finance exists shall have the right to seek rehearing and judicial review in accordance with Act 231 of 1973 as amended, (Ark Stat. Ann. Section 73-229.1).

b. The Company's agreement to defer or phase-in a portion of the Grand

Gulf costs as provided in this Agreement is also conditioned upon the Company's ability to record on its books, on a current basis, the deferral of any Grand Gulf costs under applicable accounting standards adopted or required by the FASB or the FERC. In the event the Company is not able to record on its books, on a current basis, the deferral of any Grand Gulf costs because of changes in accounting standards, policies or procedures by the FASB or FERC, or changes in the application of existing standards, policies or procedures by the FASB or FERC, the parties agree to use their best efforts to negotiate a mutually acceptable amendment to this Agreement which will modify the Agreement to reflect such changes in accounting standards adopted or required by the FASB or the FERC.

Unless an amendment to this Agreement which is mutually acceptable to the parties is achieved and approved by the Commission, after public notice and hearing, within ninety (90) days after such change occurs, this Agreement will terminate except that all costs associated with Grand Gulf Unit 1 which have been defered by AP&L prior to the termination of this Agreement will be recovered in accordance with the provisions of this Agreement. The parties agree that if either AEEC or SCGA, or any successor association, is no longer in existence at the time any such negotiations are commenced, it will be sufficient compliance with the provisions of this paragraph if their attorneys of record in this proceeding, or their successors, are given appropriate notice of, and an

opportunity to participate in, any such negotiations.

3. The parties agree that:

a. AP&L shall have the right to sell the capacity and energy available from its Retained Share to third parties, (as used in this Agreement, Third Parties shall not include AP&L's wholesale customers) without any restrictions or other requirements, and the acceptance of this Settlement Agreement by the Commission shall constitute approval of any such sales made or to be made by AP&L from its Retained Share during the time that Grand Gulf Unit 1 is in commercial service. In the event AP&L is not able to sell the capacity and energy available from its Retained Share to third parties, it shall have the right to sell the energy available from such

capacity to AP&L retail customers at a price equal to AP&L's avoided energy cost.

b. AP&L's avoided energy cost will be equal to the avoided energy cost as filed with the Commission pursuant to AP&L's Cogeneration Service Rider M23 or any superseding rate schedule.

c. All proceeds from such sales of capacity or energy from AP&L customers shall accrue to the sole benefit of the Company's stockholders and shall not be used to reduce the determination of the appropriate revenue requirement to be recovered from the Company's customer.

d. AP&L agrees that any sale of capacity and energy from AP&L's allocation of MSE's share of Grand Gulf Unit 1 to third parties during the ten-year period between September, 1985

and August 31, 1995, will be allocated between the Retained Share and the Inventory Share in the following manner:

i) fifty (50) percent of the capacity and/or energy sold (not to exceed the amount of capacity allocated to the Retained Share) wil be considered to be a sale of capacity and/or energy from the Retained Share and the proceeds of such sale would accrue to the sole benefit of the Company's stockholder and shall not be used to reduce the determination of the appropriate revenue requirements to be recovered from the Company's customers.

ii) the remainder of the capacity and/or energy sold will be considered to be a sale from the Inventory Share and the proceeds of such sale shall be applied to reduce the costs allocated to the Inventory Share

for the year in which such sale is made in accordance with paragraph 4 of this Agreement. Provided, however, the Commission shall have the option to determine that such sale will not be made from the Inventory Share in which event the sale will be considered to be a sale solely from the Retained Share (to the extent of the capacity allocated to the Retained Share) and the proceeds applied as set forth in subparagraph 3(d)(i) above.

4. Any energy available to AP&L from the Inventory Share shall be sold to AP&L Arkansas retail customers at AP&L's avoided energy cost as defined in subparagraph 3(b) of this agreement or any such energy may be sold to third parties if such energy can be sold for more than AP&L's avoided energy cost. All revenues resulting from the sale of

energy from the Inventory Share to AP&L customers or to third parties in excess of the variable costs of producing that energy shall be applied to reduce the Inventory Share. Variable costs shall not include depreciation expense calculated on a units-of-production or similar method.

5. In settlement of all other issues in APSC Docket No. 84-249-U, the parties agree as follows:

a. In addition to the implementation of Rider M33 in accordance with this Agreement, AP&L shall be permitted to increase its Arkansas retail rates, effective September 9, 1985, by $52 million on a total company basis and to implement new rate schedules applicable to its Arkansas retail customers designed to produce an Arkansas retail revenue requirement, ex Reynolds, of

$787,857,000 as set forth on the attached Exhibit 2.

b. The presently approved fuel adjustment clause (FAC) now on file as Rate Schedule Rider M-27 shall remain in full force and effect until changed by order of the Commission, after hearing, in a general rate proceeding of AP&L. Provided, however, that for purposes of administration and calculation of the FAC the appropriate base cost of fuel and purchased power expense included in the Company's base rates (the "B Factor") shall be 15.232 mills/kwh. Provided, however, in the event Waterford 3 is placed in commercial operation prior to March 1, 1986, the "B" Factor would revert to 15.232 mills/kwh.

c. The parties agree that the appropriate rate of return on equity for

the Company is 14.9% and this return on equity should be approved by the Commission for AP&L in this proceeding. It is recognized and agreed that the appropriate rate of return on equity for AP&L may be redetermined by the Commission in subsequent retail rate proceedings involving AP&L.

d. The parties recognize and agree that the stipulated Arkansas retail revenue requirement set forth in subparagraph 5(a) above reflects an excess capacity adjustment which denies the Company a current return on 969 megawatts of generating capacity, reflecting an investment of $215,107,000 allocated to the Arkansas retail customers. The parties agree that the Company should be allowed to earn a full deferred return on the investment in such capacity, which return will be

capitalized and recorded on the Company's books in a manner similar to an allowance for funds used during construction (AFUDC) using a capitalization rate of 14.344 percent which will result in a monthly deferral of $2,571,000. This capitalized return will be accrued and deferred on the Company's books until the Commission issues an order in the Company's next application for a general retail rate increase or until July 1, 1987, whichever first occurs, at which time the Company will be permitted to recover the amount capitalized and deferred, amortized on a level basis over a ten (1) year period, commencing on the date new rates are implemented in accordance with the Commission's order in the Company's next application for a general

retail rate increase or on July 1, 1987, whichever first occurs.

e. The parties recognize that the Agreement for sale of White Bluff capacity by AP&L to Louisiana Power & Light Company (LP&L) and New Orleans Public Service Inc. (NOPSI) dated October 28, 1982 (Unit Power Purchase Agreement), will terminate upon the commercial operation of LP&L's Waterford 3 nuclear unit. Inasmuch as AP&L should be allowed to place into effect a new Rate Schedule Rider M32 (Rider M32), in the form attached hereto as Exhibit 3. Commencing on the date Waterford 3 is placed in commercial operation, or March 1, 1986, whichever is later, AP&L would be permitted to recover additional revenues from its Arkansas retail customers, under the provisions of Rider M32, until such time as new base rate

schedules are approved by the Commission which permit AP&L to recover revenues adequate to offset the revenue loss to AP&L resulting from the termination of the UPSA.

6. The amount of any revenue increases provided for in this Settlement Agreement shall be apportioned among all classes of customers in a manner designed to produce a proportionate revenue increase for all customer classes in substantial accordance with the rate structure approved by the Commission in Docket No. 84-199-U. The parties agree that this Settlement Agreement does not resolve on a permanent basis any issues with respect to cost allocation or rate design in Docket 84-249-U and that the proceedings for the Commission's consideration of such issues shall be

transferred to a new Docket to be established by the Commission for resolution of such issues. The parties agree that any issues raised by any party to the proceedings in such new Docket with respect to cost allocation or rate design should be resolved by a final order of the Commission issued on or before March 31, 1986. Any order of the Commission in such new docket which orders a different allocation or rate design from that reflected in the rates approved in accordance with this Settlement Agreement shall be applied prospectively only.

7. All of the aforementioned parties except AP&L agree to take such action as may be necessary to voluntarily dismiss without prejudice, terminate or withdraw their interventions in the following

litigation concerning AP&L to the extent they have the ability to do so.

a. MSE vs. APSC
U.S. Court of Appeals for the Eighth Circuit, Nos. 84-2409, 84-2410, 84-2480 and 84-2356

b. APSC Docket No. 83-206-U

c. APSC Docket No. 84-040-0II

d. APSC Docket No. 84-041-0II

e. APSC Docket No. 84-190-U

f. APSC Docket No. 84-199-U

g. APSC Docket No. 85-003

h. APSC Docket No. 85-137-A

i. SEC Dockets 70-6892, 70-6906, 70-7021 and 70-7026

j. APSC v. SEC
U.S. Court of Appeals for the D.C. Circuit, No. 85-1138

AP&L agrees to take such action as may be necessary to voluntarily dismiss without prejudice, or terminate the following litigation concerning the APSC or other parties:

a. AP&L vs. APSC
U.S. District Court No. LR-C-85-571

b. Bemis et al. vs. APSC
Pulaski County Circuit Court No. 85-5130

c. AP&L vs. APSC
Arkansas Court of Appeals No. CA-85-210

AP&L also agrees to withdraw its pending Freedom of Information Act request that is the subject of item (b) listed immediately above. Each of the parties agrees that it will not refile or reinstitute suc litigation or other litigation raising similar issues on any of the same facts so long as this Agreement remains in effect. The parties agree that this Settlement Agreement is expressly contingent upon the Commission making the necessary findings in its order approving this Settlement Agreement that it will (a) voluntarily dismiss without prejudice, terminate, or withdraw

its intervention in the litigation listed above in which the Commission is a party or participant and that it will not refile or reinstitute such litigation as long as this Agreement remains in effect, and (b) take such action as may be necessary to close the Commission Dockets listed above. The continued effectiveness of this Settlement Agreement is also expressly contingent upon the Commission taking such action as may be necessary to terminate or dismiss such proceedings. It is further agreed that the parties to this agreement who are also parties to the FERC litigation in FERC Dockets ER82-483-000 and ER82-616-000 will continue to vigorously pursue petitions for rehearing or judicial review of the FERC's decision in said dockets. Any reduction or increase in AP&L's allocated share of Grand Gulf

Unit 1 from that determined by the FERC in Opinion No. 234 which results from any rehearing or judicial review of Opinion No. 234 will be applied so as to proportionately reduce or increase the allocation of cost for Grand Gulf Unit 1 which is (1) retained by AP&L (Retained Share), (2) inventoried by AP&L (Inventory Share), and (3) currently recovered from AP&L customers (Current Recovery Share). Any such modification of the allocations shall be prospective unless cash refunds are required to be paid by MSE to AP&L by order of the FERC or a reviewing court. In the event such modification results in a cash refund to AP&L of payments made to MSE, the cash refund will be applied to achieve proportionate reductions in the costs allocated to the Retained Share, the Inventory Share and the Current Recovery Share.

8. The parties agree that the application filed by AP&L in APSC Docket 85-159-U will be approved as filed without any qualification or restriction beyond the customary or standard conditions applicable to orders obtained by AP&L in previous financing applications.

9. The program designed to mitigate the impact of Grand Gulf costs on low and moderate income customers, as proposed by AP&L in its Motion filed in this docket on June 26, 1985, in connection with an earlier settlement proposal, will be adopted. It is recognized by the parties that AP&L is able to offer this program because of the reduction in revenues of Grand Gulf Unit 1 costs as provided in subparagraph (1)(a) of this Agreement and it is agreed that this program will not result in an

additional reduction in revenues to AP&L beyond that resulting from AP&L's agreement to absorb that portion of the costs associated with Grand Gulf Unit 1 allocated to the Retained Share as provided in subparagraph (1)(a) of this Agreement.

10. The parties agree that no additional rate increases or rate reductions for AP&L's Arkansas retail customers will become effective prior to the earlier of the following dates: (1) that date which is seventeen (17) months after the termination of the Unit Power Purchase Agreement between AP&L, LP&L and NOPSI dated October 28, 1982, with respect to the short-term sale of White Bluff capacity or (2) July 1, 1987, whichever first occurs, but in any event no earlier than April 1, 1987, except for: (a) rate changes resulting from a

determination by the Commission that such change in rates is justified because of the existence of an immediate and impelling necessity (excluding any consideration of the costs associated with Grand Gulf Unit 1 or any current or deferred recovery of such costs under Rider M33) pursuant to subsection (b) of Section 18 of Act 324 of 1935, as amended [Ark. Stat. Ann. Section 73-217(b)], (b) rate changes provided for under the terms of this Agreement, (c) rate changes obtained through applications under Act 310 of 1981, as amended, (d) rate changes to reflect revised estimates of decommissioning expense currently recovered under Rate Schedule Rider M29, (e) rate changes applicable solely to Reynolds under the Agreement for Electric Service between AP&L and Reynolds, or (f) rate changes under any other special

contract applicable to any Arkansas retail customer, including but not limited to, any incentive rate contract between the Company and any Arkansas retail customer. Provided, however, each of the parties except AP&L reserves the right to file a petition with the Commission seeking a reduction in AP&L's Arkansas retail rates if the Company's return on year-end equity exceeds 16.0% on its Arkansas retail business (excluding any consideration of the costs associated with Grand Gulf Unit 1 or any current or deferred recovery of such costs under Rider M33) utilizing a forward-looking test period, as adjusted, as defined in Ark. Stat. Ann. Section 73-217.5, and also adjusted to remove the effects of any non-recurring conditions occurring during the test period. For purposes of this paragraph it is agreed

that: (a) increases or decreases in revenues to the Company through the operation of the Company's fuel adjustment clause (Rate Schedule Rider M-27), (b) surcharge recoveries resulting from the appeal of the Commission's order in Docket No. 81-144-U, or (c) changes in individual rate schedules or the filing of new tariffs not involving a general rate increase would not be considered a rate increase or rate reduction.

11. Should any operating company subsidiary of Middle South Utilities, Inc. enter into a settlement agreement which is approved (or allowed to become effective) by the appropriate regulatory authority where such approval would be required in order for the Agreement to become effective, wherein the other operating company agrees to absorb a reduction in the stockholder's

recovery of costs associated with Grand Gulf Unit 1 which is proportionately greater than the reduction provided in this Settlement Agreement, the reduction in the recovery of costs associated with Grand Gulf Unit 1 provided in this Agreement will be increased so as to result in a reduction in the costs recovered by the stockholder which is proportionate to that agreed to by the other operating company.

12. AP&L's present share of Grand Gulf Unit 1 and the percentage allocations contained in paragraph 1 will not be changed due to the bankruptcy or insolvency of another operating company subsidiary of Middle South Utilities, Inc.

13. This Settlement Agreement is made upon the explicit understanding that it constitutes a negotiated settlement in the public interest.

Nothing herein shall constitute an admission of any claim, defense, rule or interpretation of law, allegation of fact, principle or method of ratemaking or cost of service determination or design of rate schedule, or terms or conditions of service, or the application of any rule or interpretation of law, that may underlie, or be perceived to underlie, this Settlement Agreement.

14. This Settlement Agreement is expressly contingent upon its approval by the APSC without modification. The various provisions of the Settlement Agreement are not severable except that the invalidity or unenforceability of paragraph 12 of this Agreement shall not affect the remaining provisions hereof. All parties will cooperate fully in seeking acceptance and approval by the APSC of the Settlement Agreement and will

support its approval in all respects without modification in any further proceedings which may be ordered, or appeals taken, with regard to this Settlement Agreement.

15. The terms of this Settlement Agreement shall be offered to all other AP&L customers and to the Public Service Commission of Missouri, as soon as practicable following the approval of this Agreement by the Commission.

16. In the event the Commission does not accept, adopt and approve this Settlement Agreement in its entirety and without modification on or before September 9, 1985, or in the event the rate schedules agreed to herein do not become effective for service rendered in accordance with the provisions contained herein on or before September 9, 1985:

(a) this Settlement Agreement shall be void and of no effect and no party shall be bound by any of the provisions or agreements herein contained; (b) all parties shall in that event be deemed to have reserved all their respective rights and remedies in these proceedings; and (c) this Settlement Agreement shall not be a part of the record in any proceedings, and all discussions and negotiations with respect to the Settlement Agreement shall be privileged and confidential.

17. The parties recognize and agree that the Statement of Financial Accounting Standards No. 71 (FASB No. 71) requires that any deferred amounts related to deferred returns or deferred cost recovery must be assured of recovery without possibility of review in the future or the deferral will not be

recordable for financial accounting purposes. The parties further agree that this Settlement Agreement is conditioned upon the Commission's including in its order approving this Settlement Agreement such provisions as may be necessary in order to assure future collection of all amounts representing a deferred return or deferred recovery of Grand Gulf costs as provided under the terms of this Settlement Agreement and Rider M33. Further, such order should approve the necessary accounting entries (as reflected in Exhibit 4) to accomplish such deferrals on the Company's books.

18. This Agreement may be amended, supplemented or modified only by a written amendment executed by AP&L, the Staff, Reynolds, and the AG and approved by the Commission after public notice and hearing. If, subsequent to the approval

of this Agreement by the Commission, (a) any provisions of this Agreement are subsequently altered or modified by the Commission or (b) the Commission establishes new rates for AP&L which are inconsistent with the provisions of this Agreement, without the mutual consent or agreement of AP&L, the Staff, the AG, and Reynolds, this Agreement shall terminate. It is the intent of the parties that if the Agreement is terminated under the provisions of this paragraph, all rights and remedies, both legal and equitable, that existed prior to this Agreement, shall be restored to all of the parties to this Agreement in the event it is terminated under the provisions of the paragraph including AP&L's right to claim that it should be allowed to recover any costs which have been allocated to the Retained Share and

not recovered by AP&L in reliance upon the other provisions of this Agreement.

19. As to the allocation and recovery of Grand Gulf costs, AP&L and Reynolds acknowledge and agree that the Agreement For Electric Service between them approved by the Commission in Docket No. 82-314-U shall be interpreted and administered in a manner consistent with the terms of this Agreement. Should any inconsistency or conflict arise between the terms of the Agreement For Electric Service and the terms of this Agreement, AP&L and Reynolds acknowledge and agree that the terms of this Agreement shall control, it being the intention of this paragraph to effect equivalent treatment of Grand Gulf cost recovery among Reynolds and other ratepayers in all respects. In consideration herefor, Reynolds agrees that, upon approval of

this Agreement by the Commission it shall promptly take such steps as are necessary to accomplish the dismissal of its petition filed with the Commission in Docket No. 85-198-U and agrees that it will not refile or reinstitute such litigation so long as this Agreement remains in effect.

DATED this 5th day of September, 1985.

ARKANSAS PUBLIC SERVICE COMMISSION STAFF

By: /s/

/s/
Steve Clark
Attorney General of Arkansas

ARKANSAS ELECTRIC ENERGY CUSTOMERS

By: /s/

SOUTHERN COTTON GINNERS ASSOCIATION

By: /s/

REYNOLDS METALS COMPANY

By: /s/

ARKANSAS POWER & LIGHT COMPANY

By: /s/

The Arkansas Public Service Commission does hereby accept and approve the terms of the above Settlement Agreement and agrees to enter an order consistent therewith this ___ day of September, 1985.

ARKANSAS PUBLIC SERVICE COMMISSION

/not signed/
Chairman

/not signed/
Commissioner

/not signed/
Commissioner

ATTEST:

/not signed/
Secretary

court found that Arkansas "seeks to close its borders to high-cost electricity" and that the Commission's examination of these financial transactions had the objective of preventing Arkansas ratepayers from bearing any costs for Grand Gulf Unit 1. If concluded that "[p]rivate [u]tility rein" this Commission would [illegible] "economic protectionism" of Arkansas ratepayers by shifting Grand Gulf I costs to ratepayers in Louisiana and Mississippi and, therefore, the Commission's activity was violative of the Commerce Clause of the United States Constitution. The Eighth Circuit Panel concluded that this Commission "must be prohibited from voiding Ark.'s role in the Grand Gulf project."

The Commission does not agree with the findings of fact and conclusions of law by the Eighth Circuit Panel. The Commission was acting in furtherance of its authority applicable to review the securities issuances of utilities within its jurisdiction, as recognized by the federal utility regulatory scheme set forth in the Federal Power Act and the Public Utility Holding Company Act. However, it is appropriate to the Commission from this federal appellate court decision that any activity of the Commission which results in a significant reduction of costs for Grand Gulf 1 to Arkansas ratepayers is in direct dependent of being funded by the United States Court of Appeals for the Eighth Circuit as

"economic protectionism," and as an impermissible interference with interstate commerce.

AP&L filed suit in the United States District Court for the Eastern District of Arkansas on August 13, 1982, seeking to require the Commission unconditionally to pass through to Arkansas ratepayers all costs of Grand Gulf 1 allocated by the FERC to AP&L.

See Arkansas Power & Light Co. v. Arkansas Public Service Commission, No. LR-C-82-257. While the court has not acted upon the AP&L complaint, it did include the following language in a Memorandum Opinion of August 30, 1982:

> In order for rates to be confiscatory, it is not necessary that stockholders receive no return and that the utility default on its debts.

> If the rates ultimately and
> temporarily produce such a
> result, the rates are
> impermissibly confiscatory.
> The rates must provide AP&L
> with a fair return on its
> invested capital . . .
> consistent with the public
> interest.

The district court defined the primary issue before it to be "whether the APSC's actions 'interfere, with interstate commerce or consciously frustrate' FERC Opinion No. 534."

In the commission's opinion, the Eighth Circuit panel has clearly misdefined its conclusion that any action by the Commission which would result in the imposition of grand jury costs from Arkansas ratepayers to ratepayers of Louisiana and Mississippi would violate the Commerce Clause. In our opinion, under the current status of the federal law in the Eighth Circuit, the federal

counts in this circuit would in all probability prompit or invalidate a Commission decision which completely protects the interests of Arkansas ratepayers from grand cult costs. Although the Commission believes that interpretations of the courts in the Eighth Circuit do not constitute the appropriate legal standard, it must acknowledge them and must recognize the gendets inherent in the application of these standards to the actions of this Commission on the issues before it. Therefore, in order to assure some protection to Arkansas ratepayers, the Commission has little choice but to accept the stipulation as submitted.

Our analysis of the legal situation in which we authorized final ontological is undertaken and effected electronically by the former Chairman of this Commission, Mr. N. M. (Mac) Norton, Jr. In his closing statement, Mr. Norton appropriately summed up the situation we now face.

Incredibly, so to speak, I have this with a black and white Person, but I'd like to think we have a lawyer who would overturned by my emotions but is overturned by my judgment is not overturned by my head, and what as a lawyer I can contribute to your analysis, I think, is a look at the legislative situation.

Let me first say that it we were in any other legislative circuit and I would probably feel differently about this. However, first basic conflict of Appeals does not seem to be cabable of appreciating the unsafe, unsound, unconstitutional law that should govern a situation such as this one.

whatever the outcome in Judge Wheeler, court, I have no doubt that the losing side would appeal. It we were that losing side, I don't think the prospects for that particular appeal would be bright, and even it we were the winning side and had the advantage I would still discount out the chances given the sufficient that the Eighth Circuit has expressed on issues that arose among these parties and on similar issues arising in Minnesota and North Dakota.

In other words, what I am saying is that a petition for certiorari to the United States Supreme Court is in the offing it there is not a settlement, because that is the only approach that can finally resolve this matter.

That will be a load off everybody. And if we will quickly, we will all be in a state of uncertainty; the economy of the state will be in a condition of uncertainty -- let's face it, the politics of the state will be in a condition of uncertainty.

not yet ruled upon the motions for representing. Appeals of the orders denying a stay and rehearing have been lodged with the Circuit Court of Appeals for the District of Columbia.

In May of 1984, the first of four proposals to settle the Grand Gulf allocation issue was filed by AP&L and MP&L. The first proposal was rejected out of hand by the Louisiana parties and, indeed, was never filed formally with the FERC or any other regulatory body. None of the Arkansas parties other than AP&L embraced the proposal since it had no prospect of being accepted by the FERC over the objections of the Louisiana parties. Furthermore, this first settlement proposal made no provision for any

shareholder approval of Grand Gulf costs.

A second settlement proposal was made by all of the MSU operating companies (L&P, MP&L, AP&L and NOPSI) in January, 1982. This proposal for the first time included a limited, temporary shareholder contribution. The contribution was of dual nature. The certainty, since it appeared that the shareholders, responsibility might be reduced by designated sales to retail customers of inventoried energy and capacity. This proposal was formally filed with the FERC and theretofore was rejected by virtually all of the parties in the Cost stages, as well as by this Commission.

FERC Chief Administrative Law Judge, Curtis Wagner, ordered all parties to the two FERC cases to attend a settlement conference in March, 1982. The Commission affirmed the conference, presented a reasonable settlement proposal for consideration, was prepared to make further concessions, and at all times negotiated in good faith. After a two and one-half day conference conducted before Judges Wagner, Liebman, and Head, the parties were unable to reach an agreement. Judge Wagner terminated the conference and issued an order requiring the parties to continue settlement discussions on their own.

ABAL filed yet another settlement proposal (the June proposal) with the

Commission in Docket No. 84-SAS-U on June 15, which was offered on a "take it or leave it" basis and was conditioned upon acceptance without modification on later than July 15, 1981. This was the first time that a settlement proposal was not developed on approval by other parties. Although the June proposal was more attractive than previous proposals, it was not as acceptable as the proposal von petore us.

After six extensive days of hearings, extensive further settlement and subsequent, during which the proposal was opposed by staff and all intervenors in this docket, the Commission on July 15 rendered an order from the bench rejecting the settlement

proposal by a vote of 5 to 1, with Chairman Johnson dissenting and announcing that he would have accepted the settlement provided (in fact all) the rates were implemented on a retroactive basis until a final decision was rendered in this docket on September 9, 1982.

On August 1, 1984, in Docket No. 84-102-U, the Commission issued an Order to Show Cause to AP&L, instructing the company to appear and show cause why certain Grand Gulf related financial adjustments entered into by AP&L should not be declared to be void under Arkansas law which requires Commission approval of the issuance by any utility of stocks, bonds, or other evidences of

independence, as well as the burchase, lease, or acquisition of utility brant. Ark. Stat. Ann. §73-523--525 (Repl. 1979). MSE filed suit in Federal district court to bermanently enjoin the show cause broceedings. ABAL intervened in the Federal court on the side of MSE while the Attorney General and Ratebayers Right Back intervened on the side of the Commission. Federal Judge Henry Woods ruled that the Commission's actions were breempted by the Federal Power Act, and bermanently enjoined the Commission from conducting further broceedings on the show cause order. Middle South Energy, Inc. v. Arkansas Public Service Commission, No. LR-C-84-778, (E.D. Ark. Sept. 14, 1984). The Commission appealed this

decision to the United States Court of Appeals for the Eighth Circuit. On August 23, 1982, the Eighth Circuit issued its ruling, rejecting the reasoning of the District Court but affirming the result. Although the Court did not decide whether the Commission show cause investigation was preempted by the Federal Power Act, it determined that the investigation was precluded by the Commerce Clause of the United States Constitution. See Middle South Energy, Inc. v. Arkansas Public Service Commission, No. 84-5045 (8th Cir., Aug. 23, 1982).

The Court noted that Commissioner Bond concern about "the economic impact on Arkansas citizens caused by AP&L's participation in Grand Gulf." The

APSC EX. C

PUBLIC SERVICE COMMISSION
ARKANSAS

IN THE MATTER	
OF THE APPLICATION	
OF ARKANSAS POWER	
AND LIGHT COMPANY	DOCKET NO.
FOR APPROVAL OF	U-84-245-U
CHANGES IN RATES	
APPLICABLE TO	ORDER
RESIDENTIAL, GENERAL	NO. 35
SERVICE, INDUSTRIAL,	
AND OTHER RETAIL	
ELECTRIC SERVICE	

IN THE MATTER	
OF THE APPLICATION	DOCKET NO.
OF REYNOLDS METALS	U-8761-28
COMPANY FOR	
INTERPRETATION OF	ORDER
AGREEMENT FOR	NO. 4
ELECTRIC SERVICE	

ORDER

On November 9, 1984, Arkansas Power and Light Company (APSL) filed with this Commission an Application which initially resulted in a request for an increase in its electric rates of approximately $48 million (almost three times larger than any previous application). Of this amount

approximately 58 million was associated with the Grand Gulf Nuclear Unit No. 1 (Grand Gulf). On September 2, 1982, all of the parties hereto filed a Joint Motion for Approval of A Proposed Settlement Agreement.

The Commission would like to be in a position to reject this settlement. The record developed before us demonstrates that, as a matter of fairness right then as a matter of law, the ratepayers of Arkansas should not have to contribute to the payment for Grand Gulf 1.

It our decision could be based solely on our duties and discretion as provided by state law, we would reject this settlement.

If our discretion were not restricted by the rulings of a federal agency and certain decisions of federal courts, we would conclude that the rates established by this settlement are consistent with Arkansas consumers.

For these reasons we hate to approve this settlement, but under the circumstances we do not feel we have any choice.

We accept this settlement because of the overwhelming likelihood of what would occur in the federal courts if we were to reject the settlement.

If we dragged on rate increase for the allocation to AP&L of the Grand Gulf bland, we are convinced that the rates would then be set by the federal

costs and that those federal costs would require Arkansas consumers to pay a full 30% of Grand Gulf costs.

If has been suggested by a few that we all take out chances in the federal courts. But this suggestion ignores the reality of how the federal courts in this circuit have consistently ruled on related utility issues.

We have concluded that the limitations imposed on our discretion by the Federal Energy Regulatory Commission (FERC) order and by federal court rulings in this circuit force our acceptance of this settlement in order to assure Arkansas ratepayers that AP&L will pay a portion of the Grand Gulf I.

Discussions

In 1985 the Commission intervened in two FERC proceedings involving APSL. The Commission vigorously contested the unprecedented positions taken by the Louisiana parties. The Commission supported the zero percent allocation of Grand Gulf to APSL as advocated by all of the Middle South Companies.

On September 3, 1986, FERC Administrative Law Judge Ernest Diamond issued his initial decision in Docket No. ER-85-816-000, known as the Grand Gulf case. Therein Judge Diamond allocated to APSL responsibility for 36% of the $3.2 billion Grand Gulf Unit 1 located in Port Gibson, Mississippi, and owned by Middle South Energy, Inc.

and in essence unsatisfactorily attirmed Grand Gulf and System Agreement cases, issued its Order No. 534 directing the

On June 13, 1982, the full FERC affirmed its initial decision in the Grand Gulf allocation also in its Opinion No. 234 dated February 4, 1982, FERC Administrative Law Judge Daniel Head issued his initial decision in a combination case, Docket No. ER-82-483-000, known as the System Agreement case. Therein Judge Head rejected System-wide cost equalization but found that AP&L should pay approximately 33% of Grand Gulf 1. The Commission vigorously opposed this Grand Gulf allocation also in its affirmed to the full FERC.

On June 13, 1982, the full FERC

the decision of Judge Lieberman finding that MSU is a single, integrated, monolithic superutility, at least insofar as the construction of passload nuclear capacity is concerned. Using Grand Gulf I as its tool for equalizing the costs of all nuclear capacity on the MSU system (ANO, Grand Gulf, and Waterford 3)," the FERC order rectified Judge Lieberman's 36% allocation of Grand Gulf I to APSL. The Commission and other parties filed with the FERC requests for a rehearing on October 30, seeking a stay and an order that the rates charged by MSE on and after July 1, 1982, be subject to refund. The FERC denied a stay and refused to find that it could order the rates to be collected subject to refund, but has

That can't be good for the public interest; that might in ways that can't be quantified cost us more than even having a full share today of Grand Gulf costs.

As I see the case in federal court, even if what I just told you is wrong, even if we were to win in front of Judge Waters . . . and he were to find that this Commission is not preempted in conducting a prudency review, what we've won is the right to litigate the prudency issue, which of course we've already done . . . we've certainly won the right to have that issue go to at least the Arkansas Supreme Court and probably to . . . the U.S. Supreme Court. . . Again, it's a long, protracted struggle. It's expensive in more ways than one. . .

Whatever doubts you might have about this settlement, and I'm sure there are many, I would ask you to weigh them against the doubts . . .about the outcome of litigation. . . both sides are in a situation that if we get everything we want litigating it. . we lose.

On the otherhand, there is almost an in terrorem aspect of bankrupting them . . . I am not willing to go into the quicksand of the Bankruptcy Court with rates for Arkansas Power & Light, but if we win everything, I fear that's what would happen.

You can evaluate the risks of litigation on various scales. I think that for both sides the risks are high. I think that they are, to be frank, somewhat higher for the ratepayer than they are for AP&L, and I say that because, as I mentioned before, we have to win twice. We have to convince the federal system that there's no preemption barring us from going ahead and doing a prudency review. Then we have to convince the Commission and then we have to make it stick in the next court system that there was imprudence here.

The Company only has to win once. Therefore, I say to you that their litigative position is slightly better than ours. The risks of litigation for us are slightly greater - - bearing in mind that we are in if not a hostile at least what

is clearly an unfriendly federal appellate circuit on this issue.

I have concluded that the stockholder hit that we've been calling it, the retained share, represents something that I could in good conscience recommend to my clients as a proxy for a prudency adjustment of an excess capacity charge, one that distributes responsibility in a degree that I believe is within the range of reasonableness -- although it is certainly not as much as I would attempt to prove if we litigated this matter and certainly not as much as I think I could prove if we litigated it, but it is within the range of reasonableness, and given that, I can not only recommend it to my clients, but I can recommend it to you. From the litigative vantage point, then, and bearing in mind the practical realities of the marketplace, I can recommend to you honestly that you approve this settlement and put this controversy behind us.

> I think that our case for reversing FERC on the law is a strong case. I believe that we can achieve some modification of that decision, and I am hopeful that we can achieve a complete reversal. If this settlement is approved, we can turn our attention to what I think is really the important fight, the one that we've got the best chance to win, and you'll notice that appeals in that case have been filed in the D.C. Circuit and not the Eighth. [Emphasis added]

It is important to keep in mind the stated intentions of AP&L in the pending federal litigation. During the hearing on the Stipulation, Chairman Johnston addressed the following inquiry to AP&L's attorney, Mr. Jerry Jackson:

> Mr. Jackson, as I understand it. . . the position of AP&L is that if this Commission

rejects the settlement proposal, that under federal law, it is not within the discretion of this Commission to so reject and that under federal preemption and the so-called Narragansett Doctrine or the series of cases arising out of Narragansett that this Commission must pass through 100 percent of the cost and that AP&L would seek to litigate that question in federal District Court. Is that a correct interpretation?

MR. JACKSON: Mr. Chairman, . . .That is our position that we have taken throughout these proceedings.

Our position is simply that if the Commission does not [accept] the settlement . . . then it is our intent to press our claims in the pending case before the U.S. District Court to secure what we believe is the relief that we're entitled to under the law, and that is 100 percent recovery of the cost related to Grand Gulf.

Also, we firmly believe that the law is clear on the Federal Power Act, as we've stated before. That this

Commission really doesn't have discretion in this particular area. This area is preempted by the Federal Power Act, which invests in the FERC the sole, exclusive, and preemptive jurisdiction with respect to matters involving interstate sales of power in interstate commerce.

[Federal] Judge Woods' decision was very clear in his oral findings from the Bench that the states don't have any authority with respect to the pass-through of costs. The FERC has addressed that issue. And the Eighth Circuit in affirming Judge Woods on impact -- or interference on interstate commerce grounds stated that the states do not have the authority to essentially erect a fence around their boundaries to keep the Grand Gulf costs out.

So, Mr. Chairman, we believe we have a very, very strong legal position. That if this Commission rejects the settlement and does not permit the full recovery of Grand Gulf costs, then we believe that the federal court has no alternative but to find that this Commission should have

> allowed full recovery and will issue an order requiring full, 100 percent of these costs. [Emphasis added].

Therefore, it appears that we are faced with the unenviable decision of whether to gamble in the federal courts where we have already received clear signals that restrict our discretion regardless of the merits of the issues under state law or to approve a Stipulation urged upon us by all of the parties hereto. It is a gross understatement to say that this is a difficult decision. It is a bitter pill to swallow to say that Arkansans must shoulder any of the burden of Grand Gulf. Yet it appears that we must now swallow that bitter pill.

In considering the Stipulation filed by the Parties, the Commissioners have been forced to make certain assumptions as to future events and the underlying premises of the Stipulation. The very length and complexity of the various proceedings, which have led up to this Stipulation render it a practical impossibility for any one document to address and dispose of all conceivable assumptions and eventualities. Assuredly, each of the parties who were engaged in the negotiations have relied upon various assumptions in agreeing to the final product. Had we the luxury of time, we might wish to delve into those assumptions. However, time is not a luxury we have been afforded and,

therefore, we must make our own assumptions about existing ambiguities, as well as future events. The Commission deems it necessary to point out some, though by no means all, of the assumptions which, of necessity we have made in reaching our decision.

During the hearing of this matter senior officials of AP&L have addressed a number of cost-cutting or belt-tightening measures that have been implemented by the Company in recognition of and in response to its depressed financial circumstances. Measures undertaken or proposed by the Company in an effort to conserve cash, reduce expenses or otherwise improve its financial condition include but are not limited to the following: efforts

to measure and improve the productivity of its employees; the development of a more economical customer billing program; severely restricting or delaying construction projects to the greatest extent that is reasonable; cash conservation practices in the areas of travel restrictions, contributions, dues and fees deferment or deletion; a hiring freeze and conservative policy on promotions; frugality in executive salaries; reduction in legal fees; reduction in interest-free deposits at financial institutions; reduction in the work force through attrition; the possible implementation of a Materials Management Information System; restrictions on advertising

expenditures; the elimination or cut-back of Company programs that are presently unnecessary; and efforts to otherwise reduce general operation and maintenance expenses.

We assume that the Stipulation contemplates an ongoing voluntary effort on the part of AP&L to continue to pursue such austerity or cost-cutting measures in order to strengthen its financial position, thereby improving the probability of AP&L's continued ability to finance the deferral or phase-in of a portion of the Grand Gulf 1 costs as provided for in the Stipulation. The continuation of such measures further appears to be imminently reasonable in light of the sacrifices which the Company's

ratepayers are now being called upon to make. The continuation of such measures appears to be a reasonable course of action on the Company's part as it endeavors to maintain its ability to finance the deferral or phase-in. In the same vein we also assume that AP&L will exercise conservative restraint and fiscal responsibility in its consideration of future dividend payments and will maintain a dividend policy which will enhance its ability to finance deferrals. Additionally we assume that the Company's plan to relocate its corporate offices to the new Capitol Towers office building will produce a net economic benefit to the Company. Further, we assume that the Company will maintain its pension funds

at a reasonable level, i.e. not overfunded.

Grand Gulf Unit 2 is not addressed either directly or indirectly in the Stipulation; therefore, we can only assume that any future decisions regarding the cancellation or completion of Unit 2 will not affect the Stipulation nor will the Stipulation have an effect upon future regulatory treatment of the costs associated with Unit 2. By omission the Stipulation leaves unresolved those issues relating to the future regulatory treatment of Unit 2.

The Stipulation has as its foundation a myriad of economic and engineering assumptions, projections and forecasts which extend over a

considerable period of time. Our acceptance of the Stipulation is, therefore, based not only upon the sworn testimony and representation of the parties but also upon our assumption that the underlying projections and forecasts made by the parties are and will prove to be reasonably accurate.

This Stipulation is directed to AP&L and seeks to allow AP&L to remain financially viable, which would allow AP&L to finance the deferred Grand Gulf costs included in the Stipulation. The Commission assumes that AP&L will only be able to renegotiate or terminate the Stipulation on the basis of inadequate revenues or earnings, if AP&L itself has inadequate revenues or earnings,

not if a sister or parent company has inadequate revenues or earnings. The Commission further assumes that the funds paid by Arkansas ratepayers will not be used to subsidize Louisiana or Mississippi ratepayers or assume the obligations of MSU operating companies to the extent that ratepayers in those states fail to bear their proportionate share of Grand Gulf 1.

The Commission intends to pursue vigorously the appeals from the FERC decision in Opinion No. 234. We assume that AP&L will make a proportionate adjustment to the Retained Share, Inventory Share, and Current Recovery Share of Grand Gulf 1 costs in order to flow through any refunds or rate reductions ordered by the FERC or any

court as a result of the appeals of Opinion No. 234 or any other Grand Gulf 1-related action initiated at the FERC. For example, if a court reversed Opinion No. 234 and ordered MSE to decrease future rates to AP&L sufficiently to recoup past overcharges, AP&L would adjust retail rates to reflect that order. Similarly, if any court ordered a stay of Opinion No. 234 after AP&L had collected rates for Grand Gulf 1, AP&L would adjust retail rates to reflect that stay.

We are confronted with a Stipulation agreement to end, though not decide, the many thorny issues pending in this Docket. The stipulation is presented for our review

and approval, specifically contingent upon our approval without modification. Our only options are to "take it or leave it," although in this instance we take some comfort from the fact that the terms of the Stipulation were reached through long hours of hard bargaining and tough negotiations between AP&L and all other parties. We have not previously been presented a settlement in which any parties other than MSU and its subsidiaries had participated in negotiations.

The Stipulation and the preceding negotiations bring to mind the statement "He who arises from the table of compromise thinking he has won, has lost." While we cannot speak to the thought processes of any of the parties

actually at the table of compromise, the Commissioners are fully aware in accepting the Stipulation that we have not won nor have the people of Arkansas won; neither have we lost. We have accepted a Stipulation which we believe to be in the public interest. Hopefully, we have put an end to years of costly litigation, to the potential for federal courts to further encroach upon the state's right to set retail electric rates and to the uncertainty of possible bankruptcy proceedings. We have enhanced the ability for all the parties to fully devote our time and resources to overturning the unjust decision of the FERC which engendered the present situation.

The Commission spent many long hours reviewing the Stipulation and approximately three hundred pages of documents, tables and charts sumitted with it. We held a public hearing of approximately four hours duration, during which comments were heard from nineteen citizens and testimony from six witnesses. Fifteen members of the public spoke in support of the settlement and the witnesses for the parties testified in support of the settlement. We have spent hours deliberating and reviewing the Stipulation, the transcript, as well as, drafting our opinion.

We have been presented with this Stipulation at the "eleventh hour." We are urged by all parties, parties who

have been bitter adversaries in this docket, to accept this Stipulation. We accept the Stipulation in the spirit in which it was presented to us, as the best of two bad alternatives. In approving it, we find that it produces rates which are in the public interest under the circumstances at this time. We do not by accepting the Stipulation abdicate our authority to set just and reasonable rates nor do we in any way deregulate AP&L now or for the duration of this Stipulation.

Therefore, based upon the sworn testimony and representation of the parties hereto, including the assumption that the projections supporting the Stipulation are and will prove to be reasonably accurate; based

upon the current status of the law in the 8th Circuit and recognizing that the law concerning preemption of the state's role in this matter is unsettled; based upon the present apparent enforceability of the FERC order, unless and until it is reversed or modified; based upon the current financial condition of AP&L; and, based upon the other presently existing circumstances as we appreciate them, we accept the Stipulation as a reasonable conclusion of this Docket. By accepting this Stipulation, we neither address nor decide the other controversial issues presented to us in this Docket.

IT IS, THEREFORE, ORDERED:

1. That the Stipulation entered into between Arkansas Power & Light Company, the Staff of the Arkansas Public Service Commission, Steve Clark, Attorney General of Arkansas, Reynolds Metals Company, Arkansas Electric Energy Consumers, and Southern Cotton Ginners Association, as filed herein, including Rate Schedule Rider M33 and Rate Schedule Rider M32, is hereby accepted, and approved.

2. That for purposes of implementing the Stipulation entered into by the parties in this proceeding, the revised rate schedules filed by Arkansas Power & Light Company in Docket No. 84-249-U, be, and the same are, hereby disapproved and the Company is authorized to file in lieu thereof

revised rate schedules consistent with the Stipulation. We find and determine that rate schedules consistent with our findings herein will be the just and reasonable rate or rates to be charged by AP&L for its service in Arkansas.

3. That the revised rate schedules to be filed for Commission approval pursuant to this Order, shall be effective for service rendered on and after September 9, 1985.

4. That the accounting entries submitted with the Stipulation, which assure future collection of any deferred costs under the phase-in and inventory provisions of Rider M33 as well as the deferred return on excess capacity, and Rate Schedule Rider M32, are approved.

BY ORDER OF THE COMMISSION

This 9th day of September, 1985.

/s/

Dr. Robert E. Johnston, Chairman

/s/

James W. Daniel, Commissioner

/s/

Patricia S. Qualls, Commissioner

/s/

Melinda Mills
Secretary of the Commission